LIBRARY
SUPREME COURT, U. S.

Supreme Court, U.S.
FILED
NOV 24 1971
T SERVER, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-123 and 71-198

NATIONAL LABOR RELATIONS BOARD,
Petitioner,
v.
BURNS INTERNATIONAL SECURITY SERVICES INC., INTERNATIONAL UNION, UNITED PLANT GUARD WORKERS OF AMERICA and its AMALGAMATED LOCAL UNION NO. 162,
Respondents.

— — —

BURNS INTERNATIONAL SECURITY SERVICES, INC.,
Petitioner,
v.
NATIONAL LABOR RELATIONS BOARD; INTERNATIONAL UNION, UNITED PLANT GUARD WORKERS OF AMERICA and its AMALGAMATED LOCAL UNION NO. 162,
Respondents.

BRIEF FOR INTERNATIONAL UNION, UPGWA, RESPONDENT AND INTERVENOR

GORDON A. GREGORY,
Attorney for International Union, UPGWA, Respondent and Intervenor

Of Counsel:
GREGORY, VAN LOPIK & HIGLE
2142 First National Building
Detroit, Michigan 48226

Interstate Brief & Record Co., 1036 Beaubien St., Detroit, Michigan 48226
WO. 2-8745—WO. 2-8732

SUBJECT INDEX

	Page
Opinions Below	2
Jurisdiction	2
Statutes Involved	2
Questions Presented	3
Statement of the Case	3
Argument:	
I. As a successor-employer, Burns is required by Sections 8 (a) (1) and 8(d) of the Act to adopt and honor the Union's bargaining agreement	7
II. Burns is a successor-employer to the previous sub-contractor, Wackenhut, at the Lockheed facility	11
Conclusion	14

TABLE OF AUTHORITIES CITED

Cases

	Page
H. K. Porter Co., Inc. v. NLRB, 397 U.S. 99	11
John Wiley & Sons v. Livingston, 376 U.S. 543	8
Maintenance, Inc., 148 NLRB 1299, 1301	12, 13
Makela Welding, Inc. v. NLRB, 387 F. 2d 40 (6th Cir. 1967)	7
Monroe Sander Corp. v. Livingston, 377 F. 2d (2nd Cir. 1967) cert. denied, 389 U.S. 831	9
NLRB v. Auto Ventshade, Inc., 276 F. 2d 303 (5th Cir. 1960)	7
NLRB v. C & C Plywood Corp., 385 U.S. 421	8
NLRB v. Huttig Sash & Door Co., 377 F. 2d 964 (8th Cir. 1967)	8
NLRB v. Hyde, 339 F. 2d 568 (9th Cir. 1964)	8
NLRB v. Zayre Corp., 424 F. 2d 1159 (5th Cir. 1970)	7
Overnite Transportation Co. v. NLRB, 372 F. 2d 765 (4th Cir. 1967) cert. denied, 389 U.S. 838	7
Perma Vinyl Corp., 164 NLRB 968	7
Ranch-Way, Inc. v. NLRB No. 368-70 (10th Cir. 1971)	10
Smith v. Evening News Association, 371 U.S. 195	8
Teamsters Local 174 v. Lucas Flour Co., 369 U.S. 95	8
Tom-A-Hawk Transit, Inc. v. NLRB, 419 F. 2d 1025 (7th Cir. 1969)	7

Page

United States Gypsum Co. v. United Steelworkers, 384 F. 2d 38 (5th Cir. 1967) cert. denied, 389 U.S. 1042 9

United Steelworkers v. Reliance Universal, Inc., 335 F. 2d 891 (3rd Cir. 1964) 9

United Steelworkers v. Warrior & Gulf Nav. Co., 363 U.S. 574 8

Wackenhut Corporation v. International Union, United Plant Guard Workers of America, 332 F. 2d 954 (9th Cir. 1964) 9

Statutes

Labor Management Relations Act, 1947, 61 Stat. 136, as amended, 73 Stat. 519, 29 U.S.C.A. § 151; et seq (1964):

Act, Sec. 8 (a) (1) 6, 7

Act, Sec. 8 (a) (5) 3, 6, 7

Act, Sec. 8 (d) 3, 7

United States Code, Title 28, Sec. 1254 (1) 2

IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-123 and 71-198

NATIONAL LABOR RELATIONS BOARD,
Petitioner,
v.
BURNS INTERNATIONAL SECURITY SERVICES INC., INTERNATIONAL UNION, UNITED PLANT GUARD WORKERS OF AMERICA and its AMALGAMATED LOCAL UNION NO. 162,
Respondents.

— — —

BURNS INTERNATIONAL SECURITY SERVICES, INC.,
Petitioner,
v.
NATIONAL LABOR RELATIONS BOARD; INTERNATIONAL UNION, UNITED PLANT GUARD WORKERS OF AMERICA and its AMALGAMATED LOCAL UNION NO. 162,
Respondents.

BRIEF FOR INTERNATIONAL UNION, UPGWA, RESPONDENT AND INTERVENOR

The International Union, United Plant Guard Workers of America (UPGWA) and its Amalgamated Local Union No. 162 (herein the "Union") was the Charging Party in all proceedings before the National Labor Relations

Board (herein the "Board"); the Intervenor before the United States Court of Appeals for the Second Circuit; and the Respondent in the instant cases brought by the Board and Burns International Security Services, Inc., (herein "Burns").*

OPINIONS BELOW

The Opinion of the Court of Appeals is reported at 411 F. 2d 911 (2nd Cir. 1971) (App. 185). The Decision and Order of the Board are reported at 182 NLRB No. 50 (App. 3).

JURISDICTION

The judgment of the Court of Appeals was entered on May 18, 1971, and was amended on July 12, 1971 (App. 198). The jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1).

STATUTES INVOLVED

The relevant statutory provisions are set forth in Appendix D of the Board's Petition for a Writ of Certiorari.

---

* The Union participated fully in all proceedings before the Board, including oral argument, and filed its brief and engaged in oral argument before the Court of Appeals. Albeit relying upon the Board to file a petition for Writ of Certiorari, the Union has a compelling interest in this Court's decision on the merits.

QUESTIONS PRESENTED

1. Whether a successor-employer violates Section 8 (a) (5) and Section 8 (d) of the Labor Management Relations Act by refusing to adopt and honor the outstanding collective bargaining agreement.

2. In such a proceeding, may a sub-contractor who is awarded a contract to provide services at a facility be held to be a successor of the previous sub-contractor and required to bargain with the Union representing the previous sub-contractor's employees, where: (a) there is a total absence of dealings between the two sub-contractors; (b) the previous sub-contractor's performance at the facility constitutes a small portion of its total business, the balance of which was not affected by the change of sub-contractors; (c) the performance of the contract is integrated into the new sub-contractor's previously existing business; (d) there is a change in supervision at the facility by the new sub-contractor; and (e) within six months after the awarding of the contract the previous sub-contractor's employees constitute less than a majority of employees at the facility?

STATEMENT OF THE CASE

The Union is an international union composed exclusively of guard employees located throughout the United States, Canada and Puerto Rico. It currently has a membership of approximately 20,000, one-fourth of which is employed by contract guard agencies such as Burns. Since it founding in 1948, the Union has experienced numerous disruptions in bargaining and contract relationships as the result

of contract guard agency successors. The instant case presents a classic example of the problem. Thus, the Union, collectively and its members individually, have a compelling interest in the enforcement of the Board's Order herein that Burns adopt and honor its predecessors bargaining agreement.

From 1962 until July 1, 1967, the Wackenhut Corporation provided guard services on a contract basis for Lockheed Aircraft Service Company (herein "Lockheed") at Ontario International Airport in California (App. 145). On March 8, 1967, the Board certified the Union as the exclusive bargaining representative of Wackenhut's guard employees performing services for Lockheed at the airport (App. 146).

After collective bargaining, Wackenhut and the Union entered into a three-year collective bargaining agreement on April 29, 1967 (App. 148-173).

Pursuant to its agreement with Wackenhut, Lockheed advertised for guard service contractors to bid for the contract (App. 145). On May 15, 1967, Burns and other potential bidders were advised at a conference called by Lockheed that Wackenhut guards were represented by the Union; that a bargaining agreement was in existence between Wackenhut and the Union; and that the Union had been certified by the Board in a recent election (App. 126). Burns was the successful bidder for contract guard services limited to Lockheed facilities at the airport (App. 145-146).

Prior to its July 1, 1967 takeover of guard operations at Lockheed, Burns began interviewing guards who were then employed by Wackenhut and represented by the Union. Burns intended to employ as many Wackenhut guards as possible who had secret or top secret government security clearances (App. 106).

Beginning on July 1, 1967, Burns provided protection services at Lockheed with 42 guards, 27 of whom were former Wackenhut guards. Guard duties and posts were basically unchanged as the result of Burns takeover from Wackenhut. Moreover, Burns adjusted wage rates retroactively to July 6, 1967, "Because when we took over the contract, we decided that we would not allow the employees to lose anything on their present wages" (App. 108).

By letter dated July 12, 1967, the Union demanded that Burns recognize it ". . . as the exclusive representative of all guard employees in the appropriate unit at Lockheed Aircraft Service Company [and] that you honor the collective bargaining agreement" (App. 174-175).

Burns replied to this demand by letter dated July 24, 1967, stating that:

> "The matter is being reviewed but I would understand that any guards employed by our Los Angeles office at Lockheed Aircraft Service Company in Ontario, California, are members of and are represented by American Federation of Guards, Local 1, a union with whom our Los Angeles office now has a collective bargaining agreement and has had over a period of years. There is, accordingly, a substantial good faith doubt here that your claim is valid" (App. 176).

Burns' refusal to bargain and honor the bargaining agreement caused the Union to file an unfair labor practice charge with the Board on July 24, 1967, and an amended charge on August 1, 1967 (App. 1).

In its Decision and Order dated May 7, 1970, the Board found that Burns was a successor employer to Wackenhut and therefore obligated by Sections 8 (a) (1) and (5) of the Act to recognize and bargain with the Union. The

Board also held (with Member Jenkins dissenting), that Burns, as a successor, was obligated to adopt and honor the collective bargaining agreement between Wackenhut and the Union, and that its failure to do so further violated Sections 8 (a) (1) and (5) of the Act (App. 3-13).

On petitions for review and enforcement, the Court of Appeals sustained the Board's findings that Burns was a successor employer to Wackenhut and, therefore, required to recognize and bargain with the Union (App. 188-189). It rejected, however, that portion of the Board's Order which required Burns to adopt and honor the bargaining agreement between Wackenhut and the Union (App. 190-192).

By Order dated October 12, 1971, this Court granted review of the judgment of the Court of Appeals, insofar as it declined to enforce the Board's Order requiring Burns to adopt and honor the bargaining agreement between its predecessor and the Union. Review was also granted as to that portion of Burns' petition for a Writ of Certiorari which raised questions as to the status of a sub-contractor in successor cases (App. 199-200).

ARGUMENT

I.

AS A SUCCESSOR-EMPLOYER, BURNS IS REQUIRED BY SECTIONS 8 (a) (1) AND (5) AND SECTION 8 (d) OF THE ACT TO ADOPT AND HONOR THE UNION'S BARGAINING AGREEMENT.

The Court of Appeals and the Board correctly held on the basis of substantial precedent that Burns was a successor employer to Wackenhut and therefore required to recognize and bargain with the Union. *Tom-A-Hawk Transit, Inc. v. NLRB,* 419 F. 2d 1025 (7th Cir. 1969); *NLRB v. Zayre Corp.,* 424 F. 2d 1159 (5th Cir. 1970); *NLRB v. Auto Ventshade, Inc.,* 276 F. 2d 303 (5th Cir. 1960); and *Overnite Transportation Co. v. NLRB,* 372 F. 2d 765 (4th Cir. 1967), cert. denied, 389 U.S. 838.

Burns' duty to bargain included the obligation to maintain existing terms and conditions of employment, whether or not those terms and conditions were established by a bargaining agreement. *Overnite Transportation, supra;* and *Makela Welding, Inc., v. NLRB,* 387 F. 2d 40 (6th Cir. 1967). In this respect the Court below entered an amended judgment that Burns make whole all employees for any loss of pay or other benefits suffered as a result of unilateral changes in working conditions (App. 198). Moreover, if Wackenhut had violated its bargaining obligations to the Union, Burns would be under an obligation to remedy such violations. *Perma Vinyl Corp.,* 164 NLRB 968 (1967).

Thus, in almost all essential aspects of a bargaining relationship the Board, with Court approval, has held that a successor employer is bound by the obligations of its predecessor. While it is true that the breach of a contract is not *per se* unfair labor practice, the Board may interpret

and give effect to the terms of a bargaining agreement when necessary to adjudicate an unfair labor practice and to remedy unfair labor practices which also constitute a breach of contract. *NLRB v. C & C Plywood Corp.*, 385 U.S. 421 (1967) and *Smith v. Evening News Association*, 371 U.S. 195 (1962). To this end, the Board has prohibited unilateral modifications or repudiation of bargaining agreements during their terms. *NLRB v. Hyde*, 339 F. 2d 568 (9th Cir. 1964); *NLRB v. Huttig Sash & Door Co.*, 377 F. 2d 964 (8th Cir. 1967).

Prior to the instant case, however, and those consolidated with it, the Board declined to hold that an unconsenting successor had a statutory duty to adopt and honor its predecessor's bargaining agreement with the incumbent union. Direction to change that policy came with decisions of this Court declaring that the principal objective of the national labor policy is the preservation of industrial peace through the encouragement and maintenance of stable bargaining relationships. *United Steelworkers v. Warrior and Gulf Nav. Co.*, 363 U.S. 574 (1960); *Teamsters Local 174 v. Lucas Flour Co.*, 369 U.S. 95 (1961).

Additional guidance for the maintenance of a stable and uniform national labor policy was provided by the Court in its landmark decision in *John Wiley & Sons v. Livingston*, 376 U.S. 543 (1964). Speaking for a unanimous Court, Mr. Justice Harlan held:

> "While the principles of law governing ordinary contracts would not bind to a contract an unconsenting successor to a contracting party, *a collective bargaining agreement* is not an ordinary contract. '. . . *It is a generalized code to govern a myriad of cases which the draftsmen cannot wholly anticipate* . . .' The collective agreement covers the whole employment relationship. It calls into being a new common law—the common law of a particular

> industry or of a particular plant.' *Warrior & Gulf, supra,* 363 U.S. at 578-479. *Central to the peculiar status and function of a collective bargaining agreement is the fact, dictated* both by circumstances, [See id, at 580] and *by the requirements of the National Labor Relations Act, that it is not in any real sense the simple product of a consensual relationship.* Therefore, although the duty to arbitrate, as we have said, *supra,* . . . must be founded on a contract, the impressive policy considerations favoring arbitration are not wholly overborne by the fact that Wiley did not sign the contract being construed. This case cannot readily be assimilated to the category of those in which there is no contract whatever, or none which is reasonably related to the party sought to be obligated. There was a contract, and Interscience, Wiley's predecessary, was party to it. We thus find Wiley's obligation to arbitrate this dispute in the Interscience contract construed in the context of a national labor policy." (376 U.S. at 549-550.) (Emphasis added, footnotes omitted.)

Interpreting and applying the rule in *Wiley,* the Court held in *Wackenhut Corporation v. International Union, United Plant Guard Workers of America,* 332 F. 2d 954 (9th Cir. 1964) that:

> "The specific rule we derive from *Wiley* is that where there is substantial similarity of operation and continuity of identity of the business enterprise before and after a change in ownership, a collective bargaining agreement . . . entered into by a predecessor employer is binding upon the successor employer." (332 F. 2d at 958.)

Accord: *United Steelworkers v. Reliance Universal, Inc.,* 335 F. 2d 891 (3rd Cir. 1964); *United States Gypsum Co. v. United Steelworkers,* 384 F. 2d 38 (5th Cir. 1967), cert. denied, 389 U.S. 1042; *Monroe Sander Corp. v. Livingston,* 377 F. 2d 6 (2nd Cir. 1967), cert. denied, 389 U.S. 831.

On the basis of successor-employer rules expressed by the Board prior to the instant *Burns* case, and as clarified by this Court in *Wiley,* it is clear that the tests for determining a successor's obligations under either the Act or an existing bargaining agreement are virtually identical. The rationale for both tests is to promote industrial stability and substitute the collective bargaining process in all its aspects for economic warfare.

Since both the Board and federal courts are charged with the responsibility of interpreting and enforcing a single labor act, and of fashioning a uniform body of federal labor law, it follows that where an employer takes over an operation under conditions rendering him a successor, he is required to recognize and bargain with the incumbent union and to honor any lawful bargaining agreement then in effect. To hold otherwise would negate the federal policy of a uniform labor law and permit a "successor-employer" (who, after all, stands in the shoes of his predecessor) to destroy the maintenance of stable bargaining relationships and industrial peace which the Act intended to preserve and promote.

Whether or not a bargaining agreement contains a compulsory arbitration clause, it should be honored by the successor-employer since it establishes current terms and conditions of employment pending notice and bargaining as required by Sections 8 (a) (5) and 8 (d) of the Act, and, if arbitration is available, a means to resolve employee disputes which might otherwise wholly disrupt industrial stability.

Subsequent to the decision of the Second Circuit below (April 26, 1971), the Tenth Circuit held in *Ranch-Way, Inc., v. NLRB,* No. 368-70, decided June 24, 1971 (10th Cir. 1971) that a successor-employer "is bound by the collective

bargaining provisions of an agreement between its predecessor and a union". Albeit the court spoke of ". . . a lock, stock and barrel sale of a going concern, resulting in a substantial continuity of identity . . .", it clearly based its holding on the rationale expressed by this Court in *Wiley* and the Board in *Burns*.

Contrary to the Court below, the Board's action was not contrary to either the letter or spirit of this Court's decision in *H. K. Porter Co., Inc. v. NLRB*, 397 U.S. 99 (1970). In *Porter*, the parties had never agreed upon a contract covering employees represented by the Union. By contrast, Burns, with full advance knowledge, elected to take over an employing industry without significant change, and retained a majority of employees who had only recently expressed their federally protected right to select a bargaining representative and to engage in collective bargaining leading to execution of a written contract. As surely as the employer in *Wiley* assumed traditional commercial obligations of its predecessor, Burns, by virtue of purchasing Wackenhut's account at Lockheed by bid and taking over the existing work force, assumed the bargaining agreement which its employees had negotiated for the employing industry.

II.

BURNS IS A SUCCESSOR-EMPLOYER TO THE PREVIOUS SUB-CONTRACTOR, WACKENHUT, AT THE LOCKHEED FACILITY.

Both the Board and Court below rejected Burns contention that its subcontractor status should alter its standing as a successor to Wackenhut. Its status as a nationwide contractor for guard services does not change the fact that it succeeded to the performance of security services only at the Lockheed facility. It employed a majority of the

predecessor's employees and performed security functions in the same manner, including the use of a former supervisor of Wackenhut. Changes in the operation regarded by Burns as significant, occurred after its takeover on July 1, 1967, and cannot be considered to affect its initial successor-employer status.

The Board has previously considered the lack of direct business contact between sub-contractors in a service industry who, by competitive bidding, succeed to an "employing industry". In *Maintenance, Inc.*, 148 NLRB 1299 1301 (1964), the Board stated:

> "It is true that in *Johnson Ready Mix*, unlike the instant case, the respondent company acquired by purchase certain physical assets of the company whose operations it took over. But, contrary to Trial Examiner, we do not view this as a substantial basis for distinction in applying the fundamental principle involved. The duty of an employer who has taken over an 'employing industry' to honor the employees' choice of a bargaining agent is not one that derives from a private contract, nor is it one that necessarily turns upon the acquisition of assets or assumption of other obligations usually incident to a sale, lease, or other arrangement between employers. It is a public obligation arising by operation of the Act. The critical question is not whether Respondent succeeded to White Castle's corporate identity or physical assets, but whether Respondent continued essentially the same operation, with substantially the same employee unit whose duly certified bargaining representative was entitled to statutory recognition at the time Respondent took over."

In *Maintenance*, the Board reflected the Court's earlier holding in *Wiley* that a bargaining agreement is "not an

ordinary contract" to be interpreted in accordance with commercial law principles. This Court stated:

> "It would derogate from 'the federal policy of settling labor disputes by arbitration,' *United Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 596, if a change in the corporate structure or ownership of a business enterprise had the automatic consequence of removing a duty to arbitrate previously established; this is so as much in cases like the present, where the contracting employer disappears into another by merger, as in those in which one owner replaces another but the business entity remains the same." (376 U.S. at 549.)

Thus, it is clear that a finding of successorship and attendant statutory obligations do not depend upon any particular business relationship between the successor and its predecessor. Of prime importance is succession to a "business entity" or "employing industry" where there is a continuing identity. To use the term of the Court in *Ranch-Way, supra,* Burns succeeded "lock, stock and barrel" to "a going concern". By bidding with Lockheed against Wackenhut, it effectively purchased Wackenhut's principal asset—a contract for guard services and trained employees who possessed necessary government security clearances. In the same context, it must be considered that the Union's certification from the Board and its collective bargaining agreement were assets to Burns in terms of securing industrial peace and stability.

If a successor to an "employing industry" has a public obligation to honor the employees' choice of a bargaining agent, it must necessarily follow under the rule of *Wiley* that the statutory obligation includes honoring the employees' bargaining agreement.

As found by the Board in the instant case, Burns' employees work in an industry in which the identity of their employer is subject to annual bidding. Their basic security is the bargaining agreement and unlike an employer they cannot readily adjust to changes in ownership of the employing industry.

Accordingly, the Union respectfully submits that in the interest of a uniform national labor policy, this Court should affirm the Board's ruling that a successor-employer is obligated by the Act to adopt and honor its predecessors bargaining agreement.

CONCLUSION

On the basis of the foregoing and the entire record, it is respectfully submitted that the Board's Order must be enforced in full.

Respectfully submitted,

GORDON A. GREGORY,
Attorney for International Union, UPGWA, Respondent and Intervenor

Of Counsel:

GREGORY, VAN LOPIK & HIGLE
2142 First National Building
Detroit, Michigan 48226

November 18, 1971

LIBRARY
SUPREME COURT, U. S.

Supreme Court, U.S.
FILED
DEC 1 1971
E. ROBERT SEAVER, CL

Nos. 71-123 and 71-198

In the Supreme Court of the United States

OCTOBER TERM, 1971

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

BURNS INTERNATIONAL SECURITY SERVICES, INC., ET AL.

BURNS INTERNATIONAL SECURITY SERVICES, INC.,
PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

ERWIN N. GRISWOLD,
Solicitor General,
HARRY R. SACHSE,
Assistant to the Solicitor General,
Department of Justice,
Washington, D.C. 20530.

PETER G. NASH,
General Counsel,
NORTON J. COME,
Assistant General Counsel,
NANCY M. SHERMAN,
Attorney,
National Labor Relations Board,
Washington, D.C. 20570.

INDEX

	Page
Opinions below	1
Jurisdiction	2
Questions presented	2
Statute involved	2
Statement	3
A. The facts	3
B. The Board's decision and order	5
C. The decision of the court of appeals	7
Summary of argument	8
Argument	12
I. The Board properly concluded that Burns was a successor to Wackenhut with respect to the Lockheed service operations, and thus required to honor Wackenhut's obligation to bargain with the Union	13
II. The Board properly concluded that Burns, as a successor to Wackenhut, violated Sections 8(a)(5) and 8(d) of the National Labor Relations Act by refusing to honor the outstanding collective bargaining agreement which Wackenhut had executed with the Union	19
A. Federal labor law rather than contract law determines whether a successor employer is bound by his predecessor's unexpired collective bargaining agreement	21

451-084—71——1

Argument—Continued
II. The Board properly concluded, etc.—Con.
B. *John Wiley & Sons* v. *Livingston*, 376 U.S. 543, establishes that under federal labor law a successor employer must honor its predecessor's collective bargaining agreement ... Page 23
C. The Board properly concluded that, except in unusual circumstances, a successor employer such as Burns is required to honor his predecessor's collective bargaining agreement ... 30
Conclusion ... 35
Appendix (statute involved) ... 37

CITATIONS

Cases:

Bath Iron Works v. *Bath Marine Draftsmen's Ass'n*, 393 F. 2d 407 ... 26
Brooks v. *National Labor Relations Board*, 348 U.S. 96 ... 18
Case Co., J. I., v. *National Labor Relations Board*, 321 U.S. 332 ... 10, 22
Chemrock Corp., 151 NLRB 1074 ... 14
Emerald Maintenance, Inc., 188 NLRB No. 139, 76 LRRM 1437, pending on petition to review, C.A. 5, Nos. 71–1402, 71–1591 ... 35
General Extrusion Co., 121 NLRB 1165 ... 25
International Brotherhood of Electrical Workers v. *National Labor Relations Board*, 341 U.S. 694 ... 27
Kota Division of Dura Corp., 182 NLRB No. 51, 74 LRRM 1104 ... 32
Lincoln Private Police, Inc., 189 NLRB No. 103, 76 LRRM 1727 ... 14, 19
Maintenance, Inc., 148 NLRB 1299 ... 14, 17

Cases—Continued

	Page
Makela Welding Inc. v. *National Labor Relations Board*, 387 F. 2d 40	13
National Labor Relations Board v. *Acme Industrial Co.*, 385 U.S. 432	27
National Labor Relations Board v. *Alamo White Truck Service, Inc.*, 273 F. 2d 238	18
National Labor Relations Board v. *Armato*, 199 F. 2d 800	13, 18
National Labor Relations Board v. *Auto Ventshade, Inc.*, 276 F. 2d 303	13, 18
National Labor Relations Board v. *Colten*, 105 F. 2d 179	13
National Labor Relations Board v. *Huttig Sash & Door Co.*, 377 F. 2d 964	20
National Labor Relations Board v. *Ideal Laundry Corp.*, 422 F. 2d 801	19
National Labor Relations Board v. *Patent Trader, Inc.*, 426 F. 2d 791	18
National Labor Relations Board v. *Quaker Tool & Die, Inc.*, 403 F. 2d 1021	13, 18
National Labor Relations Board v. *Strong*, 393 U.S. 357	20, 27
National Labor Relations Board v. *Zayre Corp.*, 424 F. 2d 1159	16, 18
Overnite Transportation Co. v. *National Labor Relations Board*, 372 F. 2d 765, certiorari denied, 389 U.S. 838	14
Porter, Inc., H. K., v. *National Labor Relations Board*, 397 U.S. 99	11, 32
Ranch-Way, Inc. v. *National Labor Relations Board*, 445 F. 2d 625, pending on petition for certiorari, No. 71–589	29
Rohlik, Inc., 145 NLRB 1236	25
Teamsters Local 24 v. *Oliver*, 358 U.S. 283	19
Textile Workers v. *Lincoln Mills*, 353 U.S. 448	20

Cases—Continued

	Page
Thomas Cadillac, Inc., 170 NLRB 884, affirmed *sub nom. Int'l Assoc. of Machinists* v. *National Labor Relations Board*, 414 F. 2d 1135, certiorari denied, 396 U.S. 889	14
Tom-A-Hawk Transit, Inc. v. *National Labor Relations Board*, 419 F. 2d 1025	17
United States Gypsum Co. v. *United Steelworkers*, 384 F. 2d 38, certiorari denied, 389 U.S. 1042	26
United States Pipe and Foundry Co. v. *National Labor Relations Board*, 398 F. 2d 544	14
United Steelworkers v. *American Mfg. Co.*, 363 U.S. 564	25
United Steelworkers v. *Reliance Universal Inc.*, 335 F. 2d 891	26
United Steelworkers v. *Warrior & Gulf Navigation Co.*, 363 U.S. 574	29
Valleydale Packers, Inc., 162 NLRB 1486, enforced, 402 F. 2d 768, certiorari denied, 396 U.S. 825	8
Wackenhut Corp. v. *United Plant Guard Workers*, 332 F. 2d 954	26
Wiley & Sons, John, v. *Livingston*, 376 U.S. 543	6, 10, 12, 21, 23, 24, 25, 27, 28, 33

Statutes:

Armed Services Procurement Act of 1947, 62 Stat. 21, as amended, 10 U.S.C. 2301 *et seq*	34
Federal Property and Administrative Services Act of 1949, 63 Stat. 377, as amended, 41 U.S.C. 251 *et seq*	34

Statutes—Continued

Labor Management Relations Act (29 U.S.C. 141, *et seq.*):
Title I:
Page
Section 8(a)(1) 5, 6, 7
Section 8(a)(2) 5, 7
Section 8(a)(5) 6, 9, 20, 37
Section 8(d) 6, 9, 11, 20, 21, 37–38
Section 9(a) 39
Title III:
Section 301 ..... 10, 19, 20, 23, 27, 39
Service Contract Act of 1965, 79 Stat. 1034, 41 U.S.C. 351 *et seq* 34

Miscellaneous:

Cox, *Rights Under A Labor Agreement*, 69 Harv. L. Rev. 601 (1956) 22
Goldberg, *The Labor Law Obligations of a Successor Employer*, 63 N.W.U.L. Rev. 735 (1969) 14

In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-123

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

BURNS INTERNATIONAL SECURITY SERVICES, INC., ET AL.

No. 71-198

BURNS INTERNATIONAL SECURITY SERVICES, INC., PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

OPINIONS BELOW

The opinion of the court of appeals (A. 185–192) is reported at 441 F. 2d 911. The decision and order of the National Labor Relations Board (A. 3–29) are reported at 182 NLRB No. 50.